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NOS. 82-585 and 82-586
(Consolidated)

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

ALOHA AIRLINES, INC.,
Appellant,
v.
DIRECTOR OF TAXATION,
STATE OF HAWAII,
Appellee.

HAWAIIAN AIRLINES, INC.,
Appellant,
v.
DIRECTOR OF TAXATION
OF THE STATE OF HAWAII,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF HAWAII

JOINT APPENDIX

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APPEALS DOCKETED OCTOBER 4, 1982
PROBABLE JURISDICTION NOTED JANUARY 10, 1983

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NOTE: The relevant opinions and orders of the courts below have already been reproduced in the Jurisdictional Statements of Aloha Airlines, Inc. in No. 82-585 ("82-585 J.S.") and of Hawaiian Airlines, Inc. in No. 82-586 ("82-586 J.S.") filed herein on October 4, 1982. The Decision and Order in Hawaii Tax Appeal Court Case No. 1772 appears at 82-585 J.S. at App. 20. The Decision and Order in Hawaii Tax Appeal Court Case Nos. 1853 and 1868 appears at 82-586 J.S. at A-28. The majority and dissenting opinions of the Hawaii Supreme Court appears at 82-585 J.S. at App. 1, and 82-586 J.S. at A-1, and the judgment of the Hawaii Supreme Court appears at 82-585 J.S. at App. 26 and 82-586 J.S. at A-34.

Relevant Docket Entries in Courts Below

A. Relevant Docket Entries in *In the Matter of the Tax Appeal of Aloha Airlines, Inc.*, Hawaii Tax Appeal Court Case No. 1772.

Date	Proceedings
Jan. 9, 1978	Notice of Appeal to Tax Appeal Court from Assessor.
Jan. 25, 1978	Answer.
Mar. 9, 1978	Stipulation of Facts.
June 9, 1978	Decision and Order: (1) Facts in Stipulation of Facts made part of decision; (2) Hawaii public service company tax ("PSC tax") held a property tax permitted by 49 U.S.C. § 1513(b); (3) PSC tax is tax on property measured by gross receipts; (4) Congress enacted 49 U.S.C. § 1513 to prohibit only head taxes and other related taxes.
June 16, 1978	Notice of Appeal to Hawaii Supreme Court.

B. Relevant Docket Entries in *In the Matter of the Tax Appeals of Hawaiian Airlines, Inc.*, Hawaii Tax Appeal Court Case Nos. 1853 & 1868.

Date	Proceedings
July 10, 1979	Notice of Appeal to Tax Appeal Court from Assessor in Case No. 1853.
July 30, 1979	Answer in Case No. 1853.
Oct. 4, 1979	Stipulation of Facts in Case No. 1853.

Oct. 26, 1979	First Supplemental Stipulation of Facts in Case No. 1853.
Nov. 9, 1979	Notice of Appeal to Tax Appeal Court from Assessor in Case No. 1868.
Nov. 23, 1979	Stipulation for Consolidation of Case Nos. 1853 & 1868 and Order Approving the same.
Jan. 4, 1980	Answer in Case No. 1868.
Jan. 4, 1980	Decision and Order: (1) Stipulated facts found to be facts of case; (2) the PSC tax is measured by the Taxpayer's gross income; (3) the PSC tax is a tax on property expressly permitted by 49 U.S.C. § 1513(b).
Jan. 16, 1980	Notice of Appeal to Hawaii Supreme Court.

C. Relevant Docket Entries in *In Re Tax Appeal of Aloha Airlines, Inc.*, Hawaii Supreme Court Appeal No. 7078 and *In Re Tax Appeals of Hawaiian Airlines, Inc.*, Hawaii Supreme Court Appeal No. 7751.

Date	Proceedings
July 20, 1978	Record on Appeal in Appeal No. 7078.
Feb. 22, 1980	Record on Appeal in Appeal No. 7751.
Mar. 18, 1980	Stipulation for Consolidation of Appeal Nos. 7078 and 7751 and Order Approving the same.
June 23, 1982	Opinion of Majority of Court: (1) Legislative history indicates purpose of 49 U.S.C. § 1513 was to prohibit taxes

	on passengers and freight users of commercial aviation system such as head taxes; (2) the PSC tax is imposed on airlines, not on passengers and freight users of commercial aviation system; (3) Compliance with 49 U.S.C. § 1513 and PSC tax law not impossible so PSC tax not prohibited by 49 U.S.C. § 1513 and Supremacy Clause.
June 23, 1982	Dissenting Opinion: (1) Plain meaning of 49 U.S.C. § 1513(a) prohibits the PSC tax; (2) Characterization of PSC tax as means of taxing personal property doesn't change essential nature of PSC tax as tax on sale of air transportation or gross receipts therefrom.
July 7, 1982	Judgment on Appeal: Decisions of Tax Appeal Court Affirmed pursuant to Hawaii Supreme Court Opinion.
Aug. 6, 1982	Notice of Appeal to Supreme Court of United States by Hawaiian Airlines, Inc.
Aug. 6, 1982	Notice of Appeal to Supreme Court of United States by Aloha Airlines, Inc.

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IN THE TAX APPEAL COURT OF THE
STATE OF HAWAII

In the Matter of the Tax Appeal	)	CASE NO. 1772
	)	
of	)	STIPULATION OF
	)	FACTS; ORDER
	)	
ALOHA AIRLINES, INC.	)	
	)	

STIPULATION OF FACTS

The parties hereto stipulate that for the purposes of this case, the following statements may be accepted as facts and all exhibits referred to and attached are incorporated in this Stipulation and made a part hereof; provided, however, that either party may produce other and further evidence material to the matters in dispute. The facts stated herein were true during each of the years in issue (1974 through 1977) unless specifically stated otherwise.

1. On January 9, 1978, Appellant filed in the Tax Appeal Court of the State of Hawaii a timely Notice of Appeal, designated as Case No. 1772, from assessments by the Director of Taxation of the State of Hawaii.

2. On January 25, 1978, Appellee filed in the Tax Appeal Court a timely Answer to the Notice of Appeal.

3. The Notice of Appeal pertains to the assessments of Public Service Company Taxes for the tax years 1974, 1975, 1976 and 1977. The amounts of tax in controversy are $811,565.27 for 1974; $979,243.67 for 1975; $1,071,892.57 for 1976; and $1,367,756.00 for 1977.

4. Appellant, a corporation organized and existing under the laws of Hawaii, engages in the transportation of persons, freight and mail by air between airports on various islands of this State. Appellant is a "public service company" as defined in Section 239-2 of the Hawaii Revised Statutes, as amended.

5. Appellant operates its flights under the authority of a Certificate of Public Convenience and Necessity issued by the Civil Aeronautics Board of the United States of America (the "CAB"), and Appellant is subject to the continuing jurisdiction of the CAB. The original permanent Certificate was issued by the CAB to Appellant in its former name of "Trans-Pacific Airlines, Ltd." on December 4, 1956, and was reissued to Appellant in its present name of "Aloha Airlines, Inc." on February 11, 1959. Copies of the original permanent Certificate and of the reissued permanent Certificate are attached hereto as Exhibits A and B, respectively.

6. Pursuant to the authority granted to it by the CAB, Appellant operates flights between the following cities:

Routes	Miles
Lihue and Kona	270
Lihue and Kahului	202
Lihue and Hilo	318
Lihue and Honolulu	102
Honolulu and Hoolehua	53
Honolulu and Hilo	216
Honolulu and Kona	170
Kahului and Kona	91
Kahului and Hilo	121

Kahului and Kamuela	78
Honolulu and Kamuela	171
Kona and Hilo	62
Kona and Kamuela	33
Hilo and Kamuela	45

A map is attached hereto as Exhibit C showing the flights operated by Appellant. Appellant alleges that all fares charged by Appellant for carrying passengers by air are subject to approval by the CAB.

7. Following is Appellant's tabulation of the total number of passengers carried and the total amount of gross receipts from carrying passengers during the years in issue. The numbers below are approximate only.

	Total Passengers	Total Gross Receipts From Carrying Passengers
1974	1,660,000	28,860,000
1975	1,780,000	32,640,000
1976	2,320,000	35,730,000
1977	2,480,000	44,100,000

8. Following is Appellant's tabulation of passengers carried by Appellant: (a) passengers whose flight pattern originated somewhere in Hawaii and (b) passengers who traveled to Hawaii via another carrier from some other state or territory of the United States or a country, traveled between islands on Aloha Airlines, and departed from the State via another carrier. This table is of approximate value only.

	Hawaii Origin		Non-Hawaii Origin	
	No. of Passengers	%	No. of Passengers	%
1974	550,000	33	1,100,000	67
1975	450,000	25	1,330,000	75
1976	540,000	23	1,780,000	77
1977	610,000	25	1,870,000	75

9. Tickets to fly on Appellant's flights are sold by Appellant, by other airlines and by travel agents throughout the United States and foreign countries.

10. During the years 1974-77 the Military Air-Sea Rescue Unit of the United States Air Force based at Hickam Air Force Base and the United States Coast Guard maintained air and sea assistance and rescue units at a constant state of readiness in Hawaii to assist airlines, including Appellant and, if needed, to rescue passengers in the event that a plane were forced to make an emergency landing at sea.

11. Each of the routes operated by Appellant during 1974-77, as listed in paragraph 6 above, except the routes between Hilo, Kona and Kamuela on the Island of Hawaii at some point, pass a distance of at least three miles from the Hawaiian coastline. Appellant alleges that under current treaties in force, the United States claims territorial jurisdiction over a territorial sea three miles from its coastline, and jurisdiction for customs and immigration purposes, but not for navigation, over a contiguous zone stretching up to twelve miles from its coastline as further supported by the affidavit attached hereto as Exhibit D. The United States is a signatory to the Convention on the Territorial Sea and contiguous Zone, 29 April 1958 [1964] 2 U.S.T. 1606, TIAS No. 5639, 516 UNTS 205, and also the Convention on the High Seas, 29 April 1958 [1962] 2 U.S.T. 2312, TIAS No. 5200, 450 UNTS 82. These treaties do not specify the width of the territorial sea, but limit the contigu-

ous zone to twelve miles, and state that all waters beyond the twelve-mile limit are considered international waters.

12. This Appeal is based on the claim of Appellant that the State of Hawaii is prohibited from levying the Public Service Company tax on Appellant's gross receipts derived from carriage of persons in air commerce by virtue of Title XI of the Federal Aviation Act of 1958, 49 U.S.C.A. Section 1513, 49 U.S.C. 1513, and also because the tax is an impermissible burden on interstate commerce. The Director of Taxation, State of Hawaii, responds that the imposition of tax herein violates neither the aforesaid Federal statute, 49 U.S.C. 1513(a), nor does it constitute an impermissible burden on interstate commerce. The aforementioned Federal statute, 49 U.S.C. 1513, was enacted as part of the Airport Development Acceleration Act of 1973, Public Law 93-44, which amended the Airport and Airway Development Act of 1970 and the Federal Aviation Act of 1958. Attached as Exhibits E through L are the following documents relating to this legislation:

Exhibit	Report
E	Committee Explanation and Conference Report on Airport Development Acceleration Act of 1973
F	House Debate and passage of Airport Development Acceleration Act of 1973
G	Senate Debate and passage of Airport Development Acceleration Act of 1973
H	Senate Report on Airport Development Acceleration Act of 1973
I	House Report on Airport Development Acceleration Act of 1973
J	Conference Report on Airport Development
K	Senate Report on Amending the Airport and Airway Development Act of 1970
L	Report on Air Passenger Fees—State and Local Charges

13. Attached hereto as Exhibit M are excerpts from the Annual Reports of the Federal Aviation Administration of Operations under the Airport and Airway Development Act of 1970, showing Federal Airport grant-in-aid projects in Hawaii during the years 1974-1976.

14. The airport system of the State of Hawaii is administered by the Airports Division of the State Department of Transportation. Airport system revenues consist of concession fees income, building space and land rentals, aviation fuel tax, Federal grants, investment income, airport use charges and other miscellaneous income. Airport system expenses consist of operating expenses (including personnel and administration), maintenance renewal and replacement, airport equipment, construction of airport facilities, guard service, crash and fire protection, utilities and other miscellaneous expenses.

The cost of construction is represented by debt service and coverage on airport system revenue bonds guaranteed by the airlines and payable from airport revenues and by debt service and coverage on reimbursable general obligation bonds guaranteed by the State general fund. The debt service and coverage on the reimbursable general obligation bonds is paid from the State general fund and reimbursed by the airport system revenues. Airport revenue bonds constitute approximately 75% of the total and reimbursable general obligation bonds constitute approximately 25% of the total bonds issued with respect to the airport system.

Airport use charges are paid by signatory airlines and are calculated pursuant to Exhibit I to the airport lease agreement executed by Appellant, a copy of which is attached hereto as Exhibit N. The airport system revenues and expenses actually incurred by the Airports Division for the fiscal years 1974, 1975, 1976 and 1977 are set forth in detail in Exhibits O, P, Q and R, respectively, hereto. Appellant paid use charges total-

ling $201,000 in fiscal 1974; $232,000 in fiscal 1975; $416,000 in fiscal 1976 and $518,000 in fiscal 1977.

15. The State of Hawaii imposes real property taxes for airport lands upon the airlines under the airport lease agreements. Aloha Airlines or its subsidiaries paid real property taxes with respect to airport system property in the amount of approximately $30,000 for each of the tax years 1974 through 1977.

16. No Hawaii tax is levied and assessed upon the tangible and intangible personal property of Appellant, including going concern value, except that Section 239-6, Hawaii Revised Statutes, as amended, states that the Public Service Company Tax (hereafter "PSC Tax") is levied and assessed thereon in lieu of any other property or franchise tax with regard to said property.

17. The PSC Tax is measured by Appellant's gross income from the air transportation of passengers or freight between airports located within the State of Hawaii.

18. All of Appellant's aircraft have as their home port or tax situs an airport within the State of Hawaii.

19. Appellant does not provide air transportation between this State and any other state.

20. Appellant does not derive any gross income from the air transportation of passengers or freight between this State and any other state; except that whenever passengers travel between another state and a destination within this State via another carrier (as far as Honolulu or Hilo) and thereafter via Appellant on a common fare ticket, such other carrier pays to Appellant a portion of Appellant's full fare with respect to the carriage of such passenger between the port of entry and some other destination within the State.

21. Appellant's principal place of business is in Honolulu, Hawaii.

22. Appellant has permanent sales offices located in Japan, Canada, Alaska, California, Illinois, New York, Texas and Washington. Appellant has 31 full-time employees employed at those ticket offices. The remainder of Appellant's 886 full-time employees are employed in the State of Hawaii.

23. Except for Appellant's equipment, supplies, offices, bank accounts, real property, personal property and rights to property used in connection with the sales offices described in Stipulation 22, Appellant's aircraft, equipment, supplies, offices, bank accounts, real property, personal property and rights to property necessary or convenient to the operation of Appellant's air transportation business are located in Hawaii.

24. The following is Appellee's tabulation of 758 passengers carried by Appellant on March 1, 1978. The common fare passengers carried by the Appellant are divided between: (a) those whom Appellant carried on the same day that they arrived by a mainland carrier; and (b) those whom Appellant carried on any day subsequent to the day of their arrival.

Total Passengers	Total Common Fare Passengers	Same Day Passengers	Other Day Passengers
758	223	0	223

Appellee's tabulation does not include the total number of passengers carried by Appellant on March 1, 1978.

25. The air traffic volumes and the statement of operations for the airport system are as indicated in the tables on page 13 of the prospectus on the issuance of the $20,000,000 airport revenue bonds, 1977 series, attached hereto as Exhibit S (hereafter "Prospectus").

26. As of November 1, 1977, there were outstanding $65,895,631 reimbursable Hawaii general obligation bonds issued to the airport system. Prospectus, p. 7.

27. Except for the taxes in connection with the sales offices specified in Stipulation 22, Appellant does not pay any tax to

any other state or foreign country upon its tangible and intangible personal property, including going concern value.

28. Appellant does not pay any tax to any other state upon or measured by Appellant's gross income from the air transportation of passengers or freight.

29. Financing statements and security agreements with regard to Appellant's aircraft are filed and recorded in the Bureau of Conveyances, State of Hawaii.

DATED: Honolulu, Hawaii, March 8, 1978.

/s/ Michael A. Shea

RICHARD L. GRIFFITH
MICHAEL A. SHEA

Of Counsel:

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/s/ Kevin T. Wakayama

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Deputy Attorney General
State of Hawaii

Attorney for Appellee,
Director of Taxation

APPROVED AND SO ORDERED:

/s/ Yasutaka Fukushima

Judge of the above-entitled Court

(All exhibits omitted in printing)

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CASE NO. 1853
IN THE TAX APPEAL COURT OF THE
STATE OF HAWAII

In the Matter of the Tax Appeal	)	
	)	
of	)	STIPULATION OF
	)	FACTS; ORDER
	)	
HAWAIIAN AIRLINES, INC.	)	
	)	

STIPULATION OF FACTS

IT IS HEREBY STIPULATED by and between the State of Hawaii, Director of Taxation, by and through the Attorney General of the State of Hawaii, and Hawaiian Airlines, Inc., by and through its attorneys, that certain facts in the above-captioned appeal, which has been designated as Case No. 1853, are as follows:

1. Taxpayer is Hawaiian Airlines, Inc. (hereinafter referred to as the "Taxpayer"), a Hawaii corporation, whose busi-

ness address is 1164 Bishop Street, 8th Floor, Honolulu, Hawaii 96813. Taxpayer is a corporation organized under the laws of the Territory of Hawaii, existing under the laws of the State of Hawaii and engaged in the transportation of persons by air between airports on various islands of the State of Hawaii. All of Taxpayer's passenger flights originate and terminate at airports located within the State of Hawaii. With the exception of such of Taxpayer's flights or portions thereof as are between airports on the Island of Hawaii, all of Taxpayer's passenger flights pass through the airspace over international waters. Taxpayer's passenger flights do not pass through the airspace of any other state or country.

2. On July 10, 1979, Taxpayer filed in the Tax Appeal Court of the State of Hawaii in this case a timely "Notice of Appeal to Tax Appeal Court from Assessor" (hereinafter "Taxpayer's Notice of Appeal") from Notices of Assessment by the Director of Taxation of the State of Hawaii (hereinafter the "Director") of Public Service Company Tax (hereinafter "PSC Tax") for the tax years 1974, 1975, 1976, 1977 and 1978 (hereinafter sometimes the "Subject Tax Years") which were mailed on June 12, 1979.

3. On July 30, 1979, the Director filed in the Tax Appeal Court of the State of Hawaii in this case, a timely answer to Taxpayer's Notice of Appeal.

4. Taxpayer's Notice of Appeal pertains to the aforesaid assessments of PSC Tax for the Subject Tax Years. The amounts of tax in controversy are as set forth in the Notices of Assessment of Additional PSC Tax for the Subject Tax Years, which are attached hereto as Exhibit "A" (hereinafter sometimes the "Assessments").

A. REVENUES FROM AIR COMMERCE

5. The Assessments are measured by the Taxpayer's gross receipts from the carriage of persons by air between airports on

islands of the State of Hawaii, over international waters.

6. The Assessments are assessments of PSC Tax under Chapter 239, Hawaii Revised Statutes. The Taxpayer is a "Public Service Company" as defined in Section 239-2(2), Hawaii Revised Statutes.

7. Taxpayer operates its business of transportation of persons by air under the authority of a Certificate of Public Convenience and Necessity issued by the Civil Aeronautics Board of the United States of America (hereinafter the "CAB"). The Taxpayer is an "interstate carrier" as defined by 49 United States Code Section 1501 for purposes of CAB jurisdiction and is subject to the continuing jurisdiction of the CAB because Taxpayer is a carrier of passengers, property and mail over the international waters which lie between the islands of the State of Hawaii. The original permanent Certificate of Public Convenience and Necessity was issued by the CAB to Taxpayer under its former name of "Inter-Island Airways, Limited" on June 16, 1939, and was reissued to Taxpayer under its present name of "Hawaiian Airlines, Inc." on September 7, 1967. Copies of the original permanent certificate and of the reissued permanent certificate are attached hereto as Exhibit "B".

B. INFORMATION REQUIRED ON TAXPAYER'S PSC TAX RETURNS

8. The Taxpayer's PSC Tax returns and amended returns for the Subject Tax Years are attached hereto as Exhibit "C".

9. A copy of State of Hawaii, Department of Taxation, Form U-6, the PSC Tax return, is attached hereto as Exhibit "D". A set of the instructions promulgated by the Director and governing with respect to such returns are attached hereto as Exhibit "E".

Form U-6 and the instructions thereto are stipulated into evidence to show that certain taxpayers (including airlines, motor carriers, certain water carriers and contract carriers) are

required to provide on Form U-6 only their respective gross receipts or gross incomes from such PSC businesses on page 1 of Form U-6 and then to compute the PSC Tax due on page 1 of Form U-6, while certain other taxpayers (public utilities taxed under Section 239-5, Hawaii Revised Statutes) are required to provide on Form U-6 all the information required on pages 1, 2, 3 and 4 of Form U-6.

10. The Public Service Companies required to pay the PSC Tax *other than* airlines and other carriers taxed by Section 239-6, Hawaii Revised Statutes, are granted an exemption from real property taxes by Chapter 239, Hawaii Revised Statutes. No such exemption is granted by Chapter 239, Hawaii Revised Statutes, to airlines and, accordingly, the Taxpayer paid real property taxes to the Director under Chapter 246, Hawaii Revised Statutes, on its real property in Hawaii in 1973 and during the Subject Tax Years.

11. Taxpayer contends that the amount of PSC Tax payable by Taxpayer in the Subject Tax Years would remain the same if (i) Taxpayer owned no tangible personal property whatsoever in the State of Hawaii in 1973 and the Subject Tax Years, (ii) all of the personal property used in Taxpayer's business during such years was owned by third parties and leased to Taxpayer, and (iii) the amount of Taxpayer's gross receipts for such years remained constant. The Director disagrees with such contention principally on the basis that such a fact situation could never occur.

C. AIRPORT DEVELOPMENT ACCELERATION ACT FUNDS IN HAWAII

12. Taxpayer contends herein that the Director is prohibited from levying the PSC Tax on its gross receipts from transportation of persons in air commerce and the sale of air transportation by subsection (a) of 49 United States Code Section 1513, which was enacted as part of the Airport Development

Acceleration Act of 1973, Public Law 93-44, which in turn was an amendment to the Airport and Airway Development Act of 1970 and the Federal Aviation Act of 1958. The Director contends that the PSC Tax is a personal property tax and thus imposition of the PSC Tax on the personal property of the Taxpayer does not violate such statute, but rather is expressly permitted by subsection (b) of 49 United States Code Section 1513.

13. In enacting the Airport Development Acceleration Act of 1973, Congress intended to accomplish three purposes: (i) to strengthen the federal program to assist airport development throughout the United States, (ii) to prohibit certain kinds of local taxation of air commerce, and (iii) to increase the federal share of the funding of airport development. A chart included in Eighth Annual Report of Operations Under the Airport and Airway Development Act (1977) and showing the history of federal grants for airport development from 1947 to 1980 as authorized by Congress is attached hereto as Exhibit "F".

14. The Director's table below shows the gross revenues and gross expenditures of the airport system of the State of Hawaii for the years ending in 1971 through 1979. Gross revenues are broken down into State of Hawaii and federal contribution components.

All airport system revenues described in Paragraph 19 of this Stipulation other than federal grants are included in state gross revenues in the Director's table on following page.

Year	Total Gross Revenues	Gross Revenues		Gross Expenditures
		State (%)	Federal (%)	
1971	$ 85,183,000	$84,898,000 (99.7%)	$ 285,000 (0.3%)	$63,634,000
1972	50,392,000	49,200,000 (97.6%)	1,192,000 (2.4%)	51,611,000
1973	93,414,000	88,777,000 (95%)	4,637,000 (5.0%)	58,395,000
1974	43,629,000	35,417,000 (81%)	8,212,000 (19%)	57,317,000
1975	77,911,000	69,882,000 (90%)	8,029,000 (10%)	79,694,000
1976	90,635,000	87,023,000 (96%)	3,612,460 (4%)	95,333,000
1977	71,963,000	59,182,000 (82%)	12,781,000 (18%)	76,131,000
1978	111,388,000	96,340,000 (86%)	15,048,000 (14%)	84,211,000
1979	83,953,000	76,159,000 (91%)	7,794,000 (9%)	92,392,000

15. For the period including fiscal years ending 1971 to 1973, capital outlays for airport and airway development in Hawaii were funded approximately 7.4% from federal grants and approximately 92.6% from other sources. For the period including fiscal years ending 1974 to 1978, (after the enactment of the Airport Development Acceleration Act of 1973), federal grants accounted for approximately 29.9% of such capital outlays and other sources accounted for approximately 70.1%.

16. Attached hereto as Exhibit "G" are (i) four tables and a summary thereof, based on annual Consolidated Statements of Receipts and Expenditures, State of Hawaii, Department of Transportation showing capital improvement expenditures in airport and airway development in Hawaii during the period including fiscal years ending 1971 to 1978 and for certain other periods and federal grants to the Department with respect thereto, showing capital expenditures for 1974-78 of $159,660,000.00 and federal grants with respect thereto of $47,682,000.00 and capital expenditures for 1971-73 of $82,421,000.00 and federal grants with respect thereto of $6,114,000.00 and (ii) excerpts from the annual reports of the Federal Aviation Administration of operations under the Airport and Airway Development Act of 1970, showing federal airport grants granted for projects in Hawaii during the years 1974-77 and an excerpt from the permanent records of the Airports Division, U.S. Federal Aviation Administration, Honolulu, Hawaii showing funds obligated for projects in Hawaii in 1978, and indicating expenditures in Hawaii for 1974-78 of $49,711,726.000.

17. The Prospectus entitled "Official Statement Relating to $20,000,000 State of Hawaii Airport System Revenue Bonds, Series of 1977," attached hereto as Exhibit "H" (hereinafter the "Prospectus"), describes the operation of the airport system. The Hawaiian Airlines, Inc. 1978 Annual Re-

port to stockholders is attached hereto as Exhibit "I" and Securities and Exchange Commission Form 10-K of Hawaiian Airlines, Inc. for the fiscal year ended December 31, 1978 is attached hereto as Exhibit "J".

18. As of November 1, 1977, there was outstanding $65,895,631.00 in reimbursable Hawaii General Obligation Bonds issued to the airport system. Prospectus, p. 7. As of July 1, 1979, there was outstanding $232,510,000.00 in Hawaii Airport System Revenue Bonds.

19. The airport system of the State of Hawaii is administered by the Airports Division of the State of Hawaii, Department of Transportation. Airport system revenues consist of concession fees income, building space and land rentals, aviation fuel tax, federal grants, investment income, airport use charges (landing fees) and other miscellaneous income. Airport system expenses consist of operating expenses (including personnel and administration), maintenance renewal and replacement, airport equipment, construction of airport facilities, guard service, crash and fire protection, utilities and other miscellaneous expenses.

The cost of construction is paid by (1) federal revenues under the Airport and Airway Development Act of 1970, (2) surplus moneys in the airport system revenue fund, (3) airport system revenue bonds guaranteed by the airlines and payable from airport revenues and (4) reimbursable general obligation bonds guaranteed by the State general fund. The debt service on and the reimbursable general obligation bonds are paid from the State general fund and reimbursed by the airport system revenues. Airport revenue bonds constitute approximately 75% of the total bonds issued with respect to the airport system, and reimbursable general obligation bonds constitute approximately 25% of the total bonds issued with respect to the airport system.

Airport charges are paid by signatory airlines and are calculated pursuant to "Amended Exhibit One" to the airport lease agreement executed by Taxpayer, a copy of which is attached hereto as Exhibit "K".

Taxpayer's gross airport use charges (landing fees) and applicable aviation fuel tax credit amounts (indicated parenthetically) were $371,598 ($231,302) in 1973, $349,278 ($226,981) in 1974, $462,646 ($228,370) in 1975, $715,021 ($232,340) in 1976, $789,039 ($243,831) in 1977, and $746,610 ($254,211) in 1978. Taxpayer paid net airport use charges (landing fees) totaling $140,296 in 1973, $122,297 in 1974, $234,276 in 1975, $482,681 in 1976, $541,151 in 1977 and $489,374 in 1978.

The State of Hawaii, Department of Transportation, Airports Division, Consolidated Statement of Receipts and Expenditures for fiscal years ending in 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978 and 1979 are attached hereto as Exhibit "L".

The airport system revenues and expenses actually incurred by the Airport Division for the fiscal years ending in 1974, 1975, 1976, 1977 and 1978 are set forth in detail in the schedules attached hereto as Exhibit "M".

20. The State of Hawaii imposes real property taxes for airport system property upon airlines under its airport lease agreements. Taxpayer paid real property taxes with respect to airport system property in the total amount of $39,758.00 for 1973, $40,011.00 for 1974, $42,356.00 for 1975, $40,968.00 for 1976, $37,946.00 for 1977 and $40,694.00 for 1978. These amounts are in addition to Taxpayer's payments of Hawaii real property taxes imposed on Taxpayer's real property, as described in Paragraph 10 hereof.

21. Taxpayer contends that no Hawaii tax is levied and assessed upon the tangible and intangible personal property of the Taxpayer, including going concern value, or the tangible

and intangible personal property of any other taxpayer in the State of Hawaii.

D. **INTERSTATE COMMERCE**

22. Pursuant to the authority granted to Taxpayer by the CAB, Taxpayer's operations to and from airports in the State of Hawaii includes flights between the following airports:

ROUTES	LENGTH OF ROUTES IN MILES
Lihue and Kona	270
Lihue and Kahului	202
Lihue and Hilo	318
Lihue and Honolulu	102
Honolulu and Molokai	53
Honolulu and Kahului	100
Honolulu and Hilo	216
Honolulu and Kona	170
Molokai and Lanai	28
Kahului and Kona	91
Kahului and Hilo	121
Kahului and Waimea	78
Kahului and Molokai	47
Kahului and Lanai	34
Honolulu and Waimea (Kamuela)	171
Kona and Hilo	62
Kona and Waimea (Kamuela)	33
Hilo and Waimea (Kamuela)	45

A map attached hereto as Exhibit "N" illustrates certain of the flights operated by Taxpayer. All fares charged by Taxpayer for carrying passengers in air commerce were filed with the CAB during the Subject Tax Years.

23. The total amount of gross receipts from transportation of passengers in air commerce or the sale of air transportation by

Taxpayer during the years in issue are as follows:

YEAR	TOTAL GROSS RECEIPTS FROM CARRYING PASSENGERS
1974	$48,582,253
1975	$54,882,270
1976	$59,403,193
1977	$64,406,778
1978	$80,896,103

Such gross receipts amounts include (i) gross receipts from the Taxpayer's transportation of passengers in air commerce between airports on islands of the State of Hawaii over international waters and (ii) gross receipts from sales of tickets for air transportation on Taxpayer's flights between airports on islands of the State of Hawaii which were not used during the above years.

24. Taxpayer's passengers include (i) passengers whose flight patterns originated in Hawaii and (ii) passengers who, on a round-trip ticket: traveled to Hawaii via another carrier from outside of Hawaii, traveled between islands via Taxpayer's flights and departed from Hawaii via another carrier. Taxpayer's passengers in the latter category included passengers whose other flights concluded or commenced within 24 hours of their flights with Taxpayer and those whose other flights did not conclude or commence within 24 hours as aforesaid. The following is a tabulation of (a) Taxpayer's gross receipts from Taxpayer's passengers whose flight patterns originated within the State of Hawaii, and (b) Taxpayer's gross receipts from Taxpayer's passengers traveling from outside of Hawaii (from other states or countries), and traveling on Taxpayer's flights.

HAWAII ORIGIN

Year	(a) Passenger Gross Receipts	% of Total
1974	$17,773,228	36.6%
1975	$19,985,243	34.4%
1976	$20,134,040	33.9%
1977	$21,425,387	33.3%
1978	$24,866,506	30.8%

NON-HAWAII ORIGIN

Year	(b) Other States and International Passenger Gross Receipts	% of Total
1974	$30,809,025	63.4%
1975	$34,897,027	62.6%
1976	$39,269,153	65.9%
1977	$42,986,391	66.7%
1978	$53,124,105	69.2%

25. Tickets to fly on Taxpayer's flights are sold by Taxpayer throughout the United States of America and in foreign countries and by travel agents in Hawaii (52.1% during November 1978 and 48.3% during December 1978), and by other airlines and by travel agents outside of Hawaii (47.9% in November 1978 and 51.7% in December 1978). Over 90% of the gross billings of Taxpayer from ticket sales by other airlines and by travel agents outside of Hawaii in November and December of 1978 were with respect to tickets for passengers who on a round-trip ticket traveled to Hawaii via another carrier from outside of Hawaii, traveled between islands via Tax-

payer's flights and departed from Hawaii via another carrier as follows:

Period	Taxpayer's Gross Billings on Tickets Sold by Other Airlines And Agents	Taxpayer's Gross Billings on Tickets Sold by Other Airlines and Agents—Passengers traveling on tickets with initial departure from and final return to outside of Hawaii	% of Total
11/78	$3,273,882.16	$3,169,284.35	96.8%
12/78	$3,373,575.15	$3,291,201.40	97.6%

Of the ticket sales by Taxpayer and travel agents in Hawaii in November 1978 and December 1978, 38.5% and 41.4% of such sales, respectively, were with respect to tickets for passengers traveling from outside of Hawaii (mainland United States of America or foreign), as follows:

Period	Taxpayer's Gross Billings on Tickets Sold by Taxpayer and Travel Agents in Hawaii	Taxpayer's Gross Billings on Tickets Sold by Taxpayer and Hawaii Travel Agents—Passengers with initial departure from and final return to outside of Hawaii	% of Total
11/78	$3,563,793	$1,373,504	38.5%
12/78	$3,156,627	$1,306,373	41.4%

26. During 1973 and the Subject Tax Years, the Military Air-Sea Rescue Unit of the United States Air Force based at Hickam Air Force Base and the United States Coast Guard maintained air and sea assistance and rescue units in a constant state of readiness in Hawaii to assist all persons in need of air-sea rescue, including airlines, boats and ships, private and commercial, including Taxpayer, and, if needed, to rescue

airline passengers in the event that a plane were forced to make an emergency landing at sea.

27. Each of the Taxpayer's passenger routes listed in Paragraph 22 above, except the routes between Hilo, Kona and Waimea (Kamuela) on the Island of Hawaii, at some point passes a distance of at least three miles from the coastline of the State of Hawaii. Each of the Taxpayer's passenger routes listed in Paragraph 22 above, except the routes between Hilo, Kona and Waimea (Kamuela) on the Island of Hawaii at some point passes at least twelve miles from the coastline of the State of Hawaii. Taxpayer did not provide regular service between Hilo, Kona and Waimea on the Island of Hawaii during the Subject Tax Years as evidenced by the absence of such routes from Taxpayer's Schedule attached hereto as Exhibit "O". Taxpayer alleges that under current treaties in force, the United States of America claims territorial jurisdiction over a territorial sea three miles from its coastline, and jurisdiction for customs and immigration purposes, but not for navigation, over a contiguous zone stretching up to twelve miles from its coastline. This is further supported by the affidavit and treaties attached hereto as Exhibit "P". The United States of America is a signatory to the Convention on the Territorial Sea and Contiguous Zone, *effective*, September 10, 1964, 15 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205, and also the Convention on the High Seas, *effective*, September 30, 1962, 13 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 82. These treaties do not specify the width of the territorial sea, but limit the contiguous zone to twelve miles, and state that all waters beyond the twelve mile limit are considered international waters.

28. The Taxpayer's executive offices and principal administrative office are in Honolulu, Hawaii. As of December 31, 1978, the Taxpayer maintained 8 airport offices, 8 non-

airport ticket offices and 2 other non-airport offices in the State of Hawaii.

29. The Taxpayer maintains 13 permanent ticket offices outside of Hawaii at the following locations: Sydney, Australia; Tokyo, Japan; Osaka, Japan; Toronto, Canada; Vancouver, Canada; Seattle, Washington; Los Angeles, California; San Francisco, California; Chicago, Illinois; New York, New York; Atlanta, Georgia; Dallas, Texas; and Washington, D.C. The Taxpayer is represented by sales representatives in London, U.K.; Frankfurt, Germany; Stockholm, Sweden; Seoul, Korea; Hong Kong, B.C.C.; Bangkok, Thailand; Taipei, Taiwan; Kuala Lumpur, Malaysia; Pirang, Singapore; Manila, Philippines; Colombo, Sri Lanka; Jakarta, Indonesia; and in South and Central America.

30. As of December 31, 1978 the Taxpayer had 52 full-time employees (2.8% of Taxpayer's full-time employees) employed at the above permanent ticket offices outside of Hawaii, 184 full-time employees (9.9% of Taxpayer's full-time employees) employed on the mainland United States of America or Alaska in connection with its air cargo division described in Paragraph 42 of this Stipulation, 1 employee (0% of Taxpayer's full-time employees) employed in Italy in connection with aircraft subleased in Italy and 1,627 full-time employees (87.3% of Taxpayer's full-time employees) employed in the State of Hawaii.

31. The PSC Tax is measured by the Taxpayer's gross receipts from the air transportation of passengers or freight between airports located within the State of Hawaii, including the Taxpayer's gross receipts from the carriage of persons by air between airports on the islands of the State of Hawaii over international waters, and not by gross receipts from any other source. The PSC Tax is not measured by the Taxpayer's gross receipts from the transportation of passengers or freight (1)

between Hawaii and any other state or country, or (2) between any two points outside the State of Hawaii.

32. As of December 31, 1978, Taxpayer's fleet of aircraft included 29 aircraft (6 owned and 23 leased), 10 of which were used in the Taxpayer's air transportation business in Hawaii, 8 of which were used outside of Hawaii in Taxpayer's U.S. mainland and Alaska air cargo business and 11 of which were leased or subleased by Taxpayer to others outside of Hawaii. As applicable to Taxpayer, the PSC Tax is measured by Taxpayer's gross income (which in Taxpayer's case is gross receipts) from the business of carriage of passengers or freight on Taxpayer's aircraft used in Hawaii and not by gross income from any other source. Taxpayer's 10 aircraft used in Hawaii are in commercial operation solely between airports located in the State of Hawaii, and, for the periods from the conclusion of a day's flights to the commencement of flights on the succeeding day, are located at Honolulu International Airport, Honolulu, Hawaii.

33. Maintenance of and overhaul work on the aircraft used in Taxpayer's business of carriage of passengers or freight between islands of the State of Hawaii is performed in Honolulu by the Taxpayer except for scheduled major overhaul work on engines which is performed in the State of California by an independent contractor, auxiliary power unit overhauls which are performed in the State of Arizona by an independent contractor, selected avionics and electronic equipment overhauls which are performed in the States of California and Arizona by independent contractors, hydraulic pump overhauls which are performed in the State of California by an independent contractor, and certain major airframe checks (which are required periodically but not as often as annually), the most recent of which was performed in California by an independent contractor.

34. Taxpayer does not provide air transportation of passen-

gers between this State and any other state or country.

35. Taxpayer does not derive any gross income from the air transportation of passengers between this State and any other state; except that whenever passengers travel between another state and a destination within this State via another carrier (as far as Honolulu or Hilo) and thereafter via Taxpayer on a common fare ticket, such other carrier pays to Taxpayer a portion of Taxpayer's full fare with respect to the carriage of such passenger between the port of entry and some other destination within the State.

36. Except for Taxpayer's equipment, supplies, offices, bank accounts, real property, personal property and rights to property used in connection with its sales offices outside Hawaii, leased or subleased aircraft by Taxpayer to others, and its air cargo transportation business, all of Taxpayer's aircraft, equipment, supplies, offices, bank accounts, real property, personal property and rights to property necessary or convenient to the operation of Taxpayer's air transportation business are located in Hawaii. As of December 31, 1978, 89.4% of Taxpayer's personal property, on a cost basis is located in Hawaii. Except for the property used in connection with out of state sales offices, leased or subleased aircraft by Taxpayer to others and its air cargo transportation business, all of Taxpayer's property used in connection with its air transportation of passengers business is located in Hawaii.

37. The following is the Taxpayer's tabulation of passengers (and billings in respect of passengers) carried by the Taxpayer during the month of November 1978. The passengers carried by the Taxpayer (and billings) are divided between: (a) those whom Taxpayer carried on the same day that they arrived or departed by a mainland carrier; and (b) those whom Taxpayer carried on any day subsequent to the day of their arrival and prior to the day of their departure.

Total Passengers	Same Day Passengers	Other Day Passengers
322,054	26,409	295,645
(100%)	(8.2%)	(91.8%)
Total Passengers Billings	**Same Day Passengers Billings**	**Other Day Passengers Billings**
$6,837,675.	$404,475.49	$6,433,199.51
(100%)	(5.9%)	(94.1%)
Common Fare Passengers	**Same Day Passengers**	**Other Day Passengers**
154,200	26,409	127,791
(100%)	(17.1%)	(82.9%)
Common Fare Passengers Billings	**Same Day Passengers Billings**	**Other Day Passengers Billings**
$3,273,882.16	$404,475.49	$2,869,406.67
(100%)	(12.35%)	(87.65%)

For purposes of the above tabulation, (i) only passengers on Taxpayer's flights departing within four hours of a flight on another carrier are treated as same day passengers, and (ii) it has been assumed that no passengers purchasing tickets from the Taxpayer or from travel agents in Hawaii were same day passengers.

The following is the Director's tabulation of passengers carried by the Taxpayer on September 20, 1979. The passengers carried by the Taxpayer are divided between (a) those whom Taxpayer carried on the same day that they arrived by a mainland carrier; and (b) those whom Taxpayer carried on any day subsequent to the day of their arrival.

Total Passengers	Same Day Passengers	Other Day Passengers
2759	146 (5.3%)	2613 (94.7%)

Common Fare Passengers	Same Day Passengers	Other Day Passengers
1321	146 (11%)	1175 (89%)

The Director's tabulation does not include the total number of passengers carried by the Taxpayer on this date.

38. Taxpayer does not pay any tax to any other state or country upon its tangible and intangible personal property, including going concern value, except for the taxes in connection with its out of state sales offices and its mainland cargo business and in connection with leased or subleased aircraft by Taxpayer to others. No other state or country taxes Taxpayer upon its tangible and intangible personal property, including going concern value, located in Hawaii.

39. Taxpayer does not pay any tax to any other state upon or measured by Taxpayer's gross income from the air transportation of passengers or freight between airports on islands of the State of Hawaii.

40. Financing statements and security agreements with respect to Taxpayer's aircraft used in Hawaii are filed and recorded in the Bureau of Conveyances, State of Hawaii, and in other states including California, Illinois and New York.

41. Taxpayer was awarded a LOGAIR contract by the United States of America, Department of Defense, Air Force Logistics Air Command, in October 1976. This was a one year contract for scheduled military cargo flights following prescribed United States Air Force routes originating in Georgia. Five Lockheed L-188 Electra freighter aircraft were leased for one year in 1976 to provide this service. Approximately 85 additional employees were utilized in this service.

Revenues from the one year LOGAIR military cargo contract totaled $2,076,000 for the fourth quarter of 1976 and $8,228,000 during the first three quarters of 1977.

42. In February 1978 Taxpayer commenced operation of an air cargo division based at Macon, Georgia. Taxpayer's air cargo division provides contract and occasional use charter cargo services on the mainland United States of America with headquarters and maintenance facilities in Macon, Georgia, and bases at Kansas City, Missouri, and Detroit, Michigan. Taxpayer's air cargo division routes in 1978 included flights between various airports in the United States of America outside of Hawaii. Eight Lockheed L-188 Electra freighter aircraft were purchased or leased under long-term leases during 1978 for use in this operation and are based and operate in states of the United States of America other than Hawaii.

43. Revenues from the Taxpayer's air cargo division, Macon, Georgia totaled $4,338,000 in 1978. The PSC Tax is not measured by such revenues. Taxpayer was awarded an additional LOGAIR contract by the United States of America, Department of Defense, Air Force Logistics Air Command in December 1978.

44. During the period 1973 to 1978, Taxpayer subleased certain of its aircraft to sublessees outside of the State of Hawaii. Seven aircraft are subleased by Taxpayer to others for use on the mainland United States and four aircraft are subleased by Taxpayer to others for use in Italy.

45. During the year ended December 31, 1973, the Taxpayer employed an average of 1,270 persons in Hawaii and mainland operations. During the year ended December 31, 1974, the Taxpayer employed an average of 1,350 persons in Hawaii and mainland operations. During the year ended December 31, 1975, the Taxpayer employed an average of 1,310

persons in Hawaii and mainland operations, of which approximately 1,170 were employed on a full-time basis. During the year ended December 31, 1976, the Taxpayer employed an average of 1,360 persons in Hawaii and mainland operations, of which approximately 1,180 were employed on a full-time basis. During the year ended December 31, 1977, the Taxpayer employed over 1,400 persons in Hawaii and mainland operations, of which approximately 1,300 were employed on a full-time basis. During the year ended December 31, 1978, the Taxpayer employed an average of 1,560 persons in Hawaii and mainland operations, of which approximately 1,420 were employed on a full-time basis.

46. The Taxpayer applied to the CAB in 1978 for several routes that would permit passenger service operations expansion outside of Hawaii. Authority was granted to the Taxpayer in the Honolulu/Seattle/Portland route and in several dormant United States of America transcontinental markets in 1978. Other carriers were also granted similar routes and the Taxpayer decided against entry into these markets in 1978. The Taxpayer was and is a participant in a proceeding at the CAB referred to as the Pacific Low Fare Case which could result in route awards from several mainland cities connecting through Hawaii to points in Asia and the South Pacific.

E. **GENERAL**

47. The foregoing statements may be accepted as facts and all Exhibits referred to and attached are incorporated in this Stipulation by reference and made a part hereof. The facts stated herein were true during each of the years in issue (1973 to 1978) unless specifically stated otherwise.

THIS STIPULATION is without prejudice to the right of either party to contest the relevancy of any fact set forth in this Stipulation and is without prejudice to the right of either party to contest the weight which should be accorded to any fact set forth

in this Stipulation. The parties hereto reserve the right to present additional facts and documents pertinent to the disposition of this cause by additional Stipulations or by testimony of witnesses.

DATED: Honolulu, Hawaii this 4th day of October, 1979.

/s/ Hugh Shearer
/s/ H. Mitchell D'Olier

HUGH SHEARER
H. MITCHELL D'OLIER

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Of Counsel:
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Appellant

/s/ Kevin T. Wakayama

KEVIN T. WAKAYAMA
Deputy Attorney General
425 Queen Street
Honolulu, Hawaii 96813

Attorney for Director of
Taxation, Appellee

APPROVED AND SO ORDERED:

/s/ Yasutaka Fukushima

Judge of the above-entitled Court

(Exhibits A-C omitted in printing)

EXHIBIT D

FORM

U-6

(REV. 1978)

PUBLIC SERVICE COMPANY TAX RETURN

1979

Name _____

Address _____

Kind of Business _____

Amount Paid _____

Check No. _____

Date Paid _____

Receipt No. _____

Amount paid with this return $ _____

COMPUTATION OF TAX

PART I.—ONLY FOR PUBLIC UTILITIES TAXED UNDER SEC. 339-204, HRS.

Excess due Line 10 to or Line 5					$
If excess is greater than 15%, show Deficit				$	$
Balance multiplied by 20%—Balance				$ X 20%	$
(Maximum Rate is 4.5%)	(Minimum Rate is 1.65%)			RATE OF TAX	%
Line 5 less Line 1(a) and/or 1(b)		X	%	(Rate shown above)	TAX DUE
Line 1(a)		X	3.35%	(Fixed Rate)	TAX DUE
Line 1(b)		X	5%	(Fixed Rate)	TAX DUE
					TOTAL TAX (1-4 April 20, June 20, Sept. 20, Dec. 20)

PART II.—ONLY FOR PUBLIC UTILITIES TAXED UNDER SEC. 339-204, HRS.

Line 1(a)		X	3.35%	(Fixed Rate)	TOTAL TAX (1-4 April 20, June 20, Sept. 20, Dec. 20)

PART III.—ONLY FOR PUBLIC UTILITIES TAXED UNDER SEC. 339-204, HRS.

Line 1(b)		X	5%	(Fixed Rate)	TOTAL TAX (1-4 April 20, June 20, Sept. 20, Dec. 20)

PART IV.—ONLY FOR AIRLINES, COMMON CARRIERS BY WATER, MOTOR CARRIERS AND CONTRACT CARRIERS TAXED UNDER SEC. 339-4, HRS.

Line 6		X	3%	(Fixed Rate)	TOTAL TAX
Line 6		X	4%	(Fixed Rate)	TOTAL TAX (1-4 April 20, June 20, Sept. 20, Dec. 20)

GROSS INCOME

1.	Total Gross Income from Public Utility Business, except Airlines, Common Carrier by Water, Motor Carrier and Contract Carrier Business (Describe fully from what sources received)	
	(a) Passenger fares for transportation between points on a scheduled route by land	
	(b) Sales of products or services to another public utility for resale to the consumer	
	(c)	
2.	Equipment Rentals Received	
	(a)	
	(b)	
3.	Joint Facility Rentals Received	
4.	Non-Operating Income from Public Utility Business (Describe Fully)	
	(a)	
	(b)	
5.	TOTAL (Lines 1 to 4)	
6.	Total Gross Income from AIRLINE, COMMON CARRIER BY WATER, MOTOR CARRIER OR CONTRACT CARRIER BUSINESS	

DEDUCTIONS

(Deductible only to a Public Utility taxed under Sec. 339-204, HRS.)

7.	Public Utility Expenses (From Schedule A, Page 2)	
8.	Public Utility Business—Uncollectible Bills	
9.	Depreciation on Public Utility Property and Equipment (From Schedule B, Page 2)	
10.	Equipment Rentals Paid (Describe Fully)	
	(a)	
	(b)	
11.	Joint Facility Rentals Paid (Describe Fully)	
	(a)	
	(b)	
12.	Taxes Paid or Accrued (From Schedule C, Page 2)	
13.	All Other Deductions Authorized by Law (Describe Fully)	
	(a)	
	(b)	
14.	TOTAL DEDUCTIONS (Lines 7 to 13)	
15.	NET INCOME for purposes of Chapter 239, HRS. (Line 5 minus Line 14)	

DECLARATION

I declare, under the penalties set forth in Section 231-36, HRS, that this return (including any accompanying schedules or statements) has been examined by me and is, to the best of my knowledge and belief, a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Hawaii income tax law, chapter 235, Hawaii Revised Statutes, and rules and regulations issued under authority thereof.

_____ _____ _____

_____ _____ _____

SCHEDULE A

1		
2		
3		
4		
5		
6		
7		
8		
	(a)	
	(b)	
	(c)	
	(d)	
	(e)	
	(f)	
	(g)	
	(h)	
	(i)	
9	TOTAL	

SCHEDULE B

Kind of Property	Date Acquired	Cost	Residual Value	DEPRECIATION	
				Prior Years	Year 1970
TOTAL					

SCHEDULE C

	(a)	
	(b)	
	(c)	
	(d)	
TOTAL TAXES PAID OR ACCRUED IN 1970		

Note

Subsection (e) of section 239-5, as enacted by Act 155, L. 1974, provides that the use of tax on the portion of the gross income of a public utility from receipts on the sale of its products or services to another public utility which such products or services shall be one-half of the portion, provided the resale is not subject to taxation under section 239-5; however, the public utility's exemption from real property taxes imposed by chapter 246 shall be reduced by the proportion that its public utility gross income bears to its total public utility gross income. Whenever the public utility has other public utility gross income, the gross income from the sale of its products or services to another public utility shall be included in applying subsection (e) in determining the rate of tax upon the other public utility gross income.

BALANCE SHEETS

ASSETS	UTILITY DEPARTMENT — END OF TAXABLE YEAR		NON-UTILITY DEPARTMENT — END OF TAXABLE YEAR	
	AMOUNT	TOTAL	AMOUNT	TOTAL
1. Cash				
2. Notes Receivable				
3. Accounts Receivable				
Less: Allowance for Bad Debts				
4. Inventories				
Raw Materials				
Work in Process				
Finished Goods				
Supplies				
5. Investments				
Stocks, Bonds, etc.				
6. Loans				
7. Deferred Charges				
(a)				
(b)				
8. Capital Assets:				
Land and Buildings				
Less: Reserves				
Machinery and Equipment				
Less: Reserves				
Furniture and Fixtures				
Less: Reserves				
Delivery Equipment				
Less: Reserves				
9. Goodwill				
10. Other Assets (Describe Fully):				
(a)				
(b)				
(c)				
(d)				
11. Total Assets in Lines 1 to 10				
LIABILITIES				
12. Notes Payable				
13. Accounts Payable				
14. Accrued Expenses (Describe Fully):				
15. Other Liabilities (Describe Fully):				
16. Reserves, etc. (Describe Fully):				
17. Capital Stock:				
Preferred Stock (Less Stock in Treasury)				
Common Stock (Less Stock in Treasury)				
18. Paid in or Capital Surplus				
19. Retained Earnings				
20. Total Lines 12 to 19				

REMARKS

ANALYSIS OF INCOME AND CHANGES IN SURPLUS

ACCOUNT TITLE	UTILITY BUSINESS	NON-UTILITY BUSINESS
Gross Operating Income (Describe Fully):		
Gross Non-Operating Income:		
Rent from Non-Operating Property		
Miscellaneous Interest Income		
Dividend Income		
Other Income (Describe Fully):		
TOTAL GROSS INCOME		
Operating Expenses (Describe Fully):		
Other Income (Describe Fully):		
TOTAL EXPENSES		
Net Corporate Income		
Paid in or Capital Surplus at Beginning of Period		
Miscellaneous Credits (Describe Fully):		
SUB-TOTAL		
Miscellaneous Debits (Describe Fully):		

EXHIBIT E

STATE OF HAWAII
DEPARTMENT OF TAXATION

Public Service Company Tax Law, Chapter 239,HRS

GENERAL EXPLANATION OF PUBLIC SERVICE COMPANY TAX
and
INSTRUCTIONS FOR FILING FORM U-6

Item 1.

Nature of tax.—The public service company tax is in the nature of a property tax measured by gross income. It is a means of taxing the real property (owned by the public utility or leased to it by a lease under which the public utility is required to pay the taxes upon the property), and the personal property of a public utility, tangible and intangible, including going concern value, and the personal property of an airline, common carrier by water, motor carrier and contract carrier other than a motor carrier, tangible and intangible, including going concern value.

Item 2.

Definition of certain terms used in Chapter 239.—

(a) "Public service company" means a public utility, motor carrier, contract carrier, or common carrier by water.

(b) "Public utility" has the meaning given that term in section 269-1.

(c) "Motor carrier" means a common carrier or contract carrier transporting freight or other property on the public highways, other than a public utility or taxicab.

(d) "Contract carrier" means a person other than a public utility or taxicab which, under contracts or agreements, engages in the transportation of persons or property for compensation, by land, water or air.

(e) "Carrier" means a person who engages in transportation and does not include a person such as a freight forwarder who provides transportation by contracting with others, except to the extent that such person himself engages in transportation.

(f) "Gross income" means the gross income from public service company business as follows: (1) gross income from the production, conveyance, transmission, delivery or furnishing of light, power, heat, coal, water, gas or oil; or

(2) gross income from the transportation of passengers or freight, or the conveyance or transmission of telephone or telegraph messages, or the furnishing of facilities for the transmission of intelligence by electricity, by land or water or air:

(i) originating and terminating within this State, or

(ii) by means of vessels or aircrafts having their home port in the State and operating between ports or airports in the State, with respect to the transportation so effected, or

(iii) by means of plant or equipment located in the State, between points in the State, or

(3) gross income from the transportation of freight by motor carriers (other than as stated in (2) above), or the conveyance or transmission of messages or intelligence through wires or cables located or partly located in the State (other than as stated in (2) above). (See item 7 for other lines of business not subject to public service company tax.)

The words "gross income" and "gross income

from public service company business'' shall not be construed to include dividends (as defined by chapter 235) paid by one member of the same group; or gross income from the sale or transfer of materials or supplies, interest on loans, or the provision of engineering, construction, maintenance or managerial services by one member of an affiliated public service company group to another member of the same group. ''Affiliated public service company group'' means an affiliated group of domestic corporations within the meaning of chapter 235, all of the members of which are public service companies. ''Member of an affiliated public service company group'' means a corporation (including the parent corporation) which is included within an affiliated public service company group.

(g) The ''net operating income'' of a public utility subject to the tax imposed by section 239-5(a) is the operating revenues less the operating expenses and tax accruals, including in the computation of such revenues and expenses, debits and credits arising from equipment rentals and joint facility rents. In the event that, but for the provisions of this sentence, deductions could not be had for expenses of services because such services were rendered by the same person or persons constituting the public utility or could not be had for income taxes, because such taxes were levied against the person or persons constituting the public utility in his or their individual capacity and not as a separate entity, there nevertheless shall be allowed as deduction in computing the net income (1) a reasonable allowance for the value of personal services actually rendered, and

(2) such proportion of the actual amount of income taxes, federal and state, as fairly represents the portion of the

income so taxed which was derived from the public utility business. (Schedules A, B and C of Form U-6, page 2, shall be used for determining "net operating income" of a public utility taxed under section 239-5(a).)

(h) "Ports," "airports," or "points in the State" shall be deemed to be such if they are loading, unloading, transshipment, assembly, transfer or relay points.

(i) "Home port" means the place where vessels or aircraft have their tax situs or principal tax situs.

(j) "Public highways" has the meaning defined by section 264-1, HRS, including both state and county highways, but operation upon rails shall not be deemed transportation on public highways.

Item 3.

Time and application of tax.—(a) **General rule.** The public service company tax applies to every public service company (1) which is in business at the commencement of a calendar year, as of January 1 of that year;

(2) which begins business after the commencement of a calendar year, as of the commencement of business.

(b) **Special rules.** (1) Company in business on January 1 but not in business during the preceding calendar year (first year of doing business):

(i) subsection (c) of section 239-9 applies. Under paragraph (2) of subsection (c) the tax is at the rate provided by section 239-5 and 239-6 except that the formula (ratio of the net income to the gross income being in excess of 15%) applicable to utilities subject to section 239-5(a) does not apply.

(ii) under subsection (c) the gross income for the calendar year is estimated and under subsection (e)

it is adjusted by the Tax Director after the close of the year to actual gross income of the company for that year.

(2) Company not in business on January 1, but business is commenced during the calendar year (first year of doing business):

(i) subsection (c) of section 239-9 applies. However, under paragraph (1) of subsection (c) the tax is at the rate of 4%.

(ii) under subsection (c) the tax is paid on the basis of an estimate and under subsection (e) it is adjusted by the Tax Director after the close of the year to the actual gross income of the company for that year.

(3) Company in business on January 1 and also in business during part or all of the preceding year, but not prior thereto (second year of doing business):

(i) subsection (d) of section 239-9 applies. The tax is at the rates provided by sections 239-5 and 239-6 except that the formula (ratio of net income to the gross income being in excess of 15%) applicable to utilities subject to section 239-5(a) does not apply.

(ii) the tax is paid on the basis of an estimate and under subsection (e) of section 239-9 is adjusted by the Tax Director after the end of the second year of doing business so as to be measured by twelve times the average monthly gross income during the period from the commencement of business to the end of the tax year involved.

(4) Company in business on January 1 and also in business during the preceding calendar year and prior thereto (third year of doing business):

(i) subsection (b) of section 239-9 applies.

(ii) the tax return showing the gross income for the

preceding calendar year shall be filed and paid on or before April 20.

Item 4.

Allocation and apportionment.—In the event a public service company is engaged in interstate or foreign commerce and an apportionment of gross income is necessary, section 239-8 provides for an apportionment on the basis of total direct cost of the transportation, conveyance or transmission within the state. "Direct cost" is interpreted to mean and include payroll or labor hired for the handling and transportation of property or persons from the point of origin to the point of destination, payroll taxes attributable to such payrolls, materials used or consumed by the taxpayer in the handling and transportation of property or persons from the point of origin to the point of destination, that portion of any rent on leased equipment which is attributable to the use of such leased equipment in the handling and transportation of property or persons from the point of origin to the point of destination, that portion of depreciation on equipment owned by the taxpayer which is attributable to the use of such equipment in the handling and transportation of property or persons from the point of origin to the point of destination, that portion of the maintenance and upkeep of equipment which is attributable to the use of such equipment in the handling and transportation of property or persons from the point of origin to the point of destination, overland and ocean freight, and insurance.

Item 5.

Acquisition of business of another company.—Subsection (f) of section 239-9 relates to the acquisition by one public service company of the business of another and provides for treating the gross income of the company so acquired the same as if it were

gross income of the acquired company; that is, the gross income to be reported by the acquiring company for the purposes of determining the amount of its tax for the year following the year in which such business was so acquired shall include, in addition to the gross income of the acquiring company during the year ending December 31 preceding, the gross income of the business or part thereof so acquired for such portion of such preceding year.

Item 6.

Consolidation or merger.—Subsection (g) of section 239-9 relates to the consolidation or merger of public service companies and provides that the liability to the tax shall attach to the company thus formed and the company thus formed shall include in its gross income, the gross income of the companies involved in the consolidation or merger.

Item 7.

Who must file Form U-6.—Each public service company shall file Form U-6, showing its taxable gross income for the preceding calendar year. In case any public service company carries on lines of business other than its public service company business, the receipts therefrom shall not be subject to public service company tax, but the same tax liabilities shall attach to such public service company on account of such other lines of business as would exist if no public service company business were done.

Item 8.

When and where Form U-6 must be filed.—Generally, the Public Service Company Tax shall be due on January 1, 1979 and the return must be filed and paid on or before April 20, 1979 to the tax collector for the district within which the principal

office of the public service company is maintained. The public service company may elect to pay the tax in four equal installments, in which case the first installment shall be paid on April 20, 1979, and the second, third and fourth installments on June 20, 1979, September 20, 1979, and December 20, 1979, respectively. If the public service company commenced business after the commencement of the calendar year 1979, the tax shall be payable on or before the twentieth day of the third month after the month in which the company commenced business. (See Item 3(b)(2).)

Note: If any date shown falls on a Saturday, Sunday, or legal holiday, substitute the next regular workday.

Item 9.

Rate of tax for public utilities.—(a) **Part I:** In the case of a public utility generally taxed under section 239-5(a), the rate of tax upon the gross income each year from its public utility business shall be determined as follows: If the ratio of net income of the company to its gross income is 15% or less, the rate of tax is 5.885%. For every 1% increase in the ratio over 15%, there shall be a corresponding increase of .2675% in the rate of tax. (See section 239-9(c) and (d) for exceptions to the above rate formula if a public utility is in its first or second year of operation.) If the gross income is apportioned under section 239-8(b) or (c), the rate of tax shall be 5.885%.

Public utilities taxed under section 239-5(a) shall use Part I of page 1, Form U-6 to compute the tax due. However, it will be necessary to first complete the Schedules on pages 2, 3 and 4 as well as the items of gross income and deductions on page 1 before using Part I.

(b) **Part II:** In the case of a public utility taxed under section 239-5(b) (relating to carriers of passengers by land which

consists in passenger fares on scheduled routes), the rate of tax shall be 5.35%. However, if such carrier has other public utility gross income, the passenger fares nevertheless shall be included in determining the rate of tax upon the other public utility gross income.

Public utilities taxed under section 239-5(b) shall report such public utility gross income on Form U-6, page 1, as item 1(a) and then use Part II of page 1 to compute the tax due. All other items and schedules may be disregarded unless other public utility gross income under section 239-5(a) is involved.

(c) **Part III:** In the case of a public utility taxed under section 239-5(c) (relating to sales of products or services to another public utility which resells such products or services), the rate of tax shall be ½%. However, if such public utility has other public utility gross income, the gross income from the sale of its products or services to another public utility shall be included in determining the rate of tax upon the other public utility gross income.

Public utilities taxed under section 239-5(c) shall report such public utility gross income on Form U-6, page 1, as item 1(b) and then use Part III of page 1 to compute the tax due. All other items and schedules may be disregarded unless other public utility gross income under section 239-5(a) is involved.

Item 10.

Rate of tax for airlines, certain carriers.—Part IV: In the case of an airline, the rate of tax upon the gross income shall be 4%; provided that if an airline adopts a rate schedule for students in grade twelve or below, traveling in school groups, providing such students at reasonable hours, a rate less than one-half of the regular adult fare, the rate of tax

upon the gross income shall be 3%. In the case of a common carrier by water, motor carrier and contract carrier other than a motor carrier, the rate of tax upon the gross income each year shall be 4%.

Airlines, common carriers by water, motor carriers and contract carriers shall report the gross income from such business on Form U-6, page 1, as item 6 and then use Part IV of page 1 to compute the tax due. All other items and schedules may be disregarded.

Item 11.

Exemption from real property taxes.—As provided in section 239-3, a public utility taxed under the public service company tax law shall be exempt from the real property tax law. In order to secure the exemption for periods on or after July 1, 1970, a public utility shall annually file with the tax assessor on or before June 30 preceding the tax year, a return of such property setting forth its claim to the exemption on Form P-7. The claim may include real property under lease to the public utility, under which leases the public utility is required to pay the taxes upon such property, and such claim to exemption shall be determined the same as if the public utility were the owner of such property.

Further, Act 135, L. 1974 (relating to sales of products or services by a public utility to another public utility for resale of such products or services) provides that the public utility's exemption from real property taxes imposed by chapter 246 shall be reduced by the proportion that its public utility gross income under section 239-5(c) bears to its total public utility gross income.

(Remaining exhibits omitted in printing)

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IN THE TAX APPEAL COURT OF THE
STATE OF HAWAII

In the Matter of the Tax Appeal	) CASE NO. 1853
	)
of	) FIRST SUPPLEMENTAL
	) STIPULATION OF
	) FACTS
HAWAIIAN AIRLINES, INC.	)
	)

FIRST SUPPLEMENTAL STIPULATION OF FACTS

In addition to the Stipulation of Facts filed on October 4, 1979 and as an amendment to paragraph 37 thereof, it is hereby stipulated by and between the State of Hawaii, Director of Taxation, by and through the Attorney General of the State of Hawaii, and Hawaiian Airlines, Inc. (hereinafter referred to as the "Taxpayer"), by and through its attorneys, that certain facts in the above-captioned appeal are as follows:

1. The last two paragraphs of Section 37 of the Stipulation of Facts are hereby amended to read in their entirety as follows:

"The following is the Director's tabulation of passengers

carried by the Taxpayer on September 20, 1979. The passengers carried by the Taxpayer are divided between (a) those whom Taxpayer carried on the same day that they arrived by a mainland carrier; and (b) those whom Taxpayer carried on any day subsequent to the day of their arrival.

Total Passengers	Same Day Passengers	Other Day Passengers
2759	146 (5.3%)	2613 (94.7%)

Common Fare Passengers	Same Day Passengers	Other Day Passengers
1321	146 (11%)	1175 (89%)

The Director's tabulation does not include the total number of passengers carried by the Taxpayer on this date. The Director's tabulation assumes that no passengers purchasing tickets from the Taxpayer or from travel agents in Hawaii were same day passengers."

2. During the period 1963 to 1978, the Hawaii Public Service Company Tax under Chapter 239, Hawaii Revised Statutes (hereinafter referred to as the "PSC Tax") was not paid by any airline that provided passenger service between points in the State of Hawaii and points on the mainland United States or in foreign countries. If the Taxpayer commenced the provision of passenger service between points in the State of Hawaii and points on the mainland United States or in foreign countries, the Director would continue to assess the PSC Tax against Taxpayer and such PSC Tax would be measured by a percentage of Taxpayer's gross receipts from inter-island service but not by a percentage of Taxpayer's gross receipts from service between points in the State of Hawaii and points on the mainland United States or in foreign countries. In the event an air carrier that provides passenger service between points in Hawaii and points on the mainland United States or in foreign countries commenced inter-island passenger service between points within

the State of Hawaii, the Director would apply the PSC Tax against such carrier and such PSC Tax would be measured by a percentage of such carrier's gross receipts from such inter-island service.

THIS STIPULATION is without prejudice to the right of either party to contest the relevancy of any facts set forth in this Stipulation and is without prejudice to the right of either party to contest the weight that should be accorded to any facts set forth in this Stipulation. The parties hereto reserve the right to present additional facts and documents pertinent to the disposition of this cause by additional stipulations or by testimony of witnesses.

Dated: Honolulu, Hawaii, this 26th day of October, 1979.

/s/ H. Mitchell D'Olier

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APPROVED AND SO ORDERED:

/s/ Yasutaka Fukushima

Judge of the above-entitled Court